

## DEPARTMENT OF STATE REVENUE

04-20130567.LOF

**Letter of Findings Number: 04-20130567**  
**Use Tax**  
**For Tax Years 2010, 2011, and 2012**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

**ISSUE****I. Use Tax - Liability.**

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-2.5-4-1; IC § 6-2.5-4-5; IC § 6-2.5-5-1 et seq.; IC § 6-2.5-5-2; IC § 6-2.5-5-3; IC § 6-2.5-5-10; IC § 6-2.5-5-12.5; IC § 6-2.5-5-30; IC § 6-2.5-5-40; IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Rhoades v. Indiana Dept. of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Ind. Dept. of State Revenue v. AOL, 963 N.E.2d 498 (Ind. 2012); USAir, Inc. v. Indiana Dept. of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993); Ind. Dept. of Revenue v. Kimball International, Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); Indiana Dept. of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983); Indianapolis Fruit Co. v. Dept. of State Revenue, 691 N.E.2d 1379 (Ind. Tax Ct. 1998); Indiana Dept. of State Rev. v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); General Motors Corp. v. Ind. Dept. of State Rev., 578 N.E.2d 399 (Ind. Tax Ct. 1991); Graham Creek Farms v. Indiana Dept. of State Revenue, 819 N.E.2d 151 (Ind. Tax Ct. 2004); [45 IAC 2.2-2-1](#); [45 IAC 2.2-3-4](#); [45 IAC 2.2-4-22](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#); [45 IAC 2.2-5-8](#); [45 IAC 2.2-5-70](#); Sales Tax Information Bulletin 75 (October 2008).

Taxpayer protests the imposition of use tax on certain purchases.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation that processes "natural" animal products and produces electricity. After an audit, the Indiana Department of Revenue ("Department") issued proposed assessments of use tax on certain purchases for the tax years 2010, 2011, and 2012. Taxpayer protests the assessment of use tax. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as necessary.

**I. Use Tax - Liability.****DISCUSSION**

Taxpayer protests the assessment of use tax on certain purchases because such purchases are exempt from sales/use tax. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue before the Department is whether Taxpayer met its burden to show that the Department's assessment is incorrect.

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). Indiana imposes a complementary use tax on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction" regardless of the merchant's or transaction's location. IC § 6-2.5-3-2(a); [45 IAC 2.2-3-4](#). The use tax is "functionally equivalent to [the] sales tax." Rhoades v. Indiana Dept. of State Revenue, 774 N.E.2d 1044, 1047-48 (Ind. Tax Ct. 2002). "Indeed, the purpose of the use tax is merely to prevent evasion of the sales tax." Ind. Dept. of State Revenue v. AOL, 963 N.E.2d 498, 501 (Ind. 2012). The person who uses, stores, or consumes property acquired in a retail transaction in Indiana is responsible for payment of use tax on the transaction. IC § 6-2.5-3-6(b).

The sales and use taxes apply to retail transactions. A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2. Selling at retail means a retail merchant "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration" in the ordinary course of the merchant's business. IC § 6-2.5-4-1. Tangible personal property is personal property that "can be seen, weighed, measured, felt, or touched . . . ." IC § 6-2.5-1-27.

Additionally, for a retail transaction to be subject to use tax, the tangible personal property must be "used, stored, or otherwise consumed" in Indiana. [45 IAC 2.2-3-4](#). For the purposes of Indiana use tax, "[u]se" means the exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The Indiana Tax Court has recognized that "[t]his is a broad definition" and that "[a]lmost any act not otherwise exempt will constitute a taxable use." *USAir, Inc. v. Indiana Dept. of State Revenue*, 623 N.E.2d 466, 469 (Ind. Tax Ct. 1993).

Taxpayer argues that certain purchases are exempt from sales and use taxes. Retail transactions ordinarily subject to use tax will be exempt if sales tax was paid at the point of purchase. IC § 6-2.5-3-4; [45 IAC 2.2-3-4](#). The legislature also provided specific exemptions from sales or use tax. IC § 6-2.5-5-1 et seq. Exemption statutes are strictly construed in favor of taxation. *Indiana Dept. of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 524 (Ind. 1983). Whether a taxpayer qualifies for an exemption from tax is "highly fact sensitive," and it is the taxpayer's burden to prove the exemption criteria has been met. *Ind. Dept. of Revenue v. Kimball International, Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

Along with multiple invoices, articles, and other documentation, Taxpayer provided a spreadsheet which identified a vendor, the item purchased, the issue, a short explanation, and the "applicable rule," i.e. the citation of an Indiana statute or regulation. Taxpayer highlighted the individual purchases it claims are exempt on a copy of the Department's audit report. This highlighted copy of the audit report correlates to the vendor spreadsheet. Taxpayer argues that each highlighted purchase is exempt pursuant to an asserted exemption. Taxpayer claims multiple exemptions for multiple purchases. Included in the claimed exemptions, among others, are the manufacturing exemption, agricultural exemption, agricultural exemption for machinery designed to move animal waste, environmental exemption, and research and development exemption.

#### **A. Manufacturing Exemption.**

Taxpayer argues that certain purchases are exempt from sales and use taxes because of [45 IAC 2.2-5-8](#) which construes the manufacturing exemption found in IC § 6-2.5-5-3. Generally, "all purchases of tangible personal property by persons engaged in the direct production [or] manufacture . . . of tangible personal property are taxable." [45 IAC 2.2-5-8\(a\)](#). However, "transactions involving manufacturing machinery, tools, and equipment are exempt" if they are purchased for "direct use in the direct production [or] manufacture . . . of other tangible personal property." IC § 6-2.5-5-3(b); [45 IAC 2.2-5-8\(a\)](#).

To claim this exemption, a taxpayer must first demonstrate that it produces tangible personal property, as it is clear that "without production there can be no exemption." *Indianapolis Fruit Co. v. Dept. of State Revenue*, 691 N.E.2d 1379, 1384 (Ind. Tax Ct. 1998).

Second, a taxpayer must show that the property was acquired for the "direct use in the direct production [or] manufacture . . . of other tangible personal property." IC § 6-2.5-5-3(b). Courts have recognized that the legislature's "repetition of the requirement that the use be direct" was intended to provide for a narrow construction of the exemption. *Indiana Dept. of State Rev. v. RCA Corp.*, 310 N.E.2d 96, 100 (Ind. Ct. App. 1974). Therefore, to be considered directly used in direct production or manufacture, the property must be "an essential and integral part of an integrated process that produces tangible personal property." *Kimball*, 520 N.E.2d at 457; [45 IAC 2.5-5-8\(c\)](#). Whether property is essential and integral to an integrated process is determined "by identifying the points where production begins and where it ends." *Indianapolis Fruit*, 691 N.E.2d at 1384. For the purposes of this exemption, the production process "begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required." [45 IAC 2.2-5-8\(d\)](#); See *General Motors Corp. v. Ind. Dept. of State Rev.*, 578 N.E.2d 399 (Ind. Tax Ct. 1991).

Property may be essential and integral to an integrated production process without actually transforming the composition of the tangible personal property being produced. *Cave Stone*, 457 N.E.2d at 524. Also, property may not be essential and integral to an integrated production process even though it is "considered essential to the conduct of the business of manufacturing." [45 IAC 2.2-5-8\(g\)](#). Additionally, property used in non-operational activities is not an essential and integral part of an integrated production process and thus not exempt. [45 IAC 2.2-5-8\(j\)](#).

Taxpayer has not shown that any of the purchased items are "an essential and integral part of an integrated process that produces tangible personal property," i.e. directly used in direct production of other tangible personal property. *Kimball*, 520 N.E.2d at 457; [45 IAC 2.5-5-8\(c\)](#). Therefore, Taxpayer has not established that the manufacturing exemption applies to any of the purchases for which it is claimed. Taxpayer has not met its burden

to prove that the assessment of use tax is incorrect. IC § 6-8.1-5-1(c).

## **B. Agricultural Exemption.**

Taxpayer claims that certain purchases are exempt from sales and use taxes because they meet the criteria of the agricultural exemption found in [45 IAC 2.2-5-6](#) and [45 IAC 2.2-5-4](#) which construe IC § 6-2.5-5-2(a), which states:

Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

"In general, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable." [45 IAC 2.2-5-6\(a\)](#). However, there is an exemption for "agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or [sic.] agricultural commodities." [45 IAC 2.2-5-6\(b\)](#); IC § 6-2.5-5-2(a).

As with the manufacturing exemption, to claim this exemption, a taxpayer must first establish that it engages in agricultural production. *Graham Creek Farms v. Indiana Dept. of State Revenue*, 819 N.E.2d 151, 156 (Ind. Tax Ct. 2004).

Second, a taxpayer must establish that the property was acquired for "direct use in the direct production, extraction, harvesting, or processing of agricultural commodities." IC § 6-2.5-5-2(a). Property which is directly used in the direct production of agricultural commodities "is an essential and integral part of an integrated process." [45 IAC 2.2-5-6\(g\)](#). Therefore, a taxpayer must establish that the property for which this exemption is claimed is "integral and essential to its production process." *Graham Creek Farms*, 819 N.E.2d at 156. Whether property is essential and integral to an integrated process is determined by "identifying the points where production begins and where it ends." *Id.* [45 IAC 2.2-5-6\(d\)](#) identifies additional purchases which are exempt:

Exempt purchases: (1) Feeds-Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process.

(2) Seeds and plants-Sales of agricultural machinery, tools, and equipment to be used directly by the purchaser to plant seeds and plants purchased exempt from tax are exempt from tax. This exemption does not apply to lawn tractors used to plant grass seed, storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.

(3) Fertilizers-Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to fertilize crops.

This exemption does not apply to storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.

(4) Insecticides and fungicides-Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to apply insecticides and fungicides are exempt from tax. This exemption does not apply to storage equipment, transportation equipment, or machinery, tools, or equipment to be incorporated into real estate.

(5) Other exempt agricultural machinery, tools, and equipment. Sales of other agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or [sic.] agricultural commodities are exempt from tax provided such machinery, tools, and equipment are directly used in the production process, i.e. they have an immediate effect upon the agricultural commodities being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural commodities.

(6) Automatic watering equipment for crops; fruit or crop harvesting or picking equipment; machinery and equipment used to bale crops; pruning machinery and equipment used for fruit trees; and equipment used to shear wool from sheep and similar tangible personal property.

(7) Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately or completely produced for resale and are, in fact, resold. Storage facilities or containers for materials or items currently undergoing production during the production process are deemed temporary storage facilities and containers.

(8) Machinery, tools, and equipment used to move a crop from the field where it was grown and harvested to equipment for temporary storage or for further processing.

- (9) Machinery, tools, and equipment used to move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to the location where such will be used in an exempt process.
- (10) Replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment.
- (11) Safety clothing or equipment which is required to allow a farmer to participate in the production process without injury or to prevent contamination of the livestock or commodity during production.

[45 IAC 2.2-5-6](#)(e) specifically identifies taxable purchases:

Taxable purchases: (1) Storage equipment. Machinery, tools, and equipment used for storage of agricultural commodities after completion of the production of agricultural commodities are taxable.

(2) Machinery, tools, and equipment which become incorporated into real property are taxable except such machinery, tools, and equipment that are directly used in the production process; i.e., they have a direct effect upon the agricultural commodities being produced, harvested, extracted, or processed.

(3) Machinery, tools, and equipment used in general farm maintenance are taxable. The sale of paint brushes and sprays, oilers, blowers, wheelbarrows, brooms, chain saws, power tools, welders, tire spreaders, drills, sanders, wrenches, and other tools used in general cleaning and maintenances are taxable. However, replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment, are exempt from tax.

(4) Sales of machinery, tools, and equipment to be used in managerial, sales, research, and development, or other nonoperational activities not directly used in production, harvesting, extraction, and processing of agricultural commodities are taxable. This category includes, but is not limited to, machinery, tools, and equipment used in any of the following activities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings; lighting fixtures for general illumination; heating and cooling equipment for general temperature control; transportation of animals, poultry, feed, fertilizer, etc., to the farm for use in farming; transportation of animals, poultry, and other farm produce from the farm to market.

[45 IAC 2.2-5-4](#) states, example omitted:

(a) Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production.

(b) The department has determined that persons occupationally engaged in producing food and commodities as used in the Indiana sales and use tax act, shall mean and include only those persons, partnerships, or corporations whose intention it is to operate a farm at a profit and not those persons who intend to operate a farm for pleasure as a hobby. Operations similar to those of a pony farm, riding stable, or the production and raising of dogs and pets, are not classified as farms for the purpose of the state gross retail tax act.

(c) The following is a partial list of items which are considered subject to the sales tax.

**TAXABLE TRANSACTIONS**

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.

Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.

Ditchers and graders.

Paints and brushes.

Refrigerators, freezers, and other household appliances.

Garden and lawn equipment, parts, and supplies.

Electricity for lighting and other non-agricultural use.

Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.

Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.

Pumps.

All saws.

All tools, including forks, shovels, hoes, welders, power tools, and hand tools.

Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.

Plumbing, electrical supplies, and accessories, pumps.

Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.  
Food for non-exempt horses, ponies, etc.  
Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.  
Field tile or culverts.  
Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).  
Any replacement parts or accessories for the above items.

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

#### EXEMPT TRANSACTIONS

- (1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
- (2) Feed and medicines sold for livestock and poultry described in Item (1).
- (3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.
- (4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.
- (5) Milking machines, filters, strainers, and aerators.
- (6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.
- (7) Grease and repair parts necessary for the servicing of exempt equipment.
- (8) Containers used to package farm products for sale.
- (9) Equipment designed to haul animal waste.
- (10) Equipment such as needles, syringes, and vaccine pumps.

(e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

(g) A farmer would not ordinarily qualify to claim an exemption on electric or other utility bills unless the amount of electricity used in direct agricultural production is separately metered. In order to qualify for an exemption when separate meters are not use [sic.], a farmer should be prepared to prove to the satisfaction of the department of revenue that the predominant use of electricity was for direct agricultural production. An exemption should never be claimed for telephone service.

(h) The sale by a farmer of grocery food not for immediate human consumption from a stand located on the seller's property is not subject to sales tax, and the farmer is not required to register as a retail merchant unless he conduct [sic.] sales of taxable items.

[45 IAC 2.2-5-4](#)(e) reiterates that "[t]he fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products[, i.e. it must be] an essential and integral part of an integrated process which produces agricultural products."

Although Taxpayer has claimed this agricultural exemption for several purchases, it has not established that any of those purchases meet the criteria for this exemption. Therefore, Taxpayer has not established that this agricultural exemption applies to the purchases for which it is claimed. Taxpayer has not met its burden to prove that the assessment of use tax is incorrect. IC § 6-8.1-5-1(c).

#### **C. Agricultural Exemption for Equipment Specifically Designed to Move Animal Waste.**

Taxpayer claims that it purchased machinery which is used 100 percent in moving animal waste, and for this reason its purchase is exempt from sales and use taxes. The purchase of "machinery or equipment [that] is designed for use in gathering, moving, or spreading animal waste" is exempt from sales or use tax if the "the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or



commodities for sale," and "the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production." IC § 6-2.5-5-2.

Taxpayer is "occupationally engaged in the production of food or commodities" which are sold. IC § 6-2.5-5-2(b)(2). However, Taxpayer has not demonstrated that the purchased items for which this exemption is claimed meet the other requirements of IC § 6-2.5-5-2. Therefore, Taxpayer has not established that this agricultural exemption applies to the purchases for which it is claimed. Taxpayer has not met its burden to prove that the assessment of use tax is incorrect. IC § 6-8.1-5-1(c).

#### **D. Environmental Exemption.**

Taxpayer claims that certain purchases are exempt from sales and use taxes because of "environmental quality compliance" as outlined in IC § 6-2.5-5-30 and [45 IAC 2.2-5-70](#). IC § 6-2.5-5-30, in relevant part, states:

- (a) Sales of tangible personal property are exempt from the state gross retail tax if:
  - (1) the property constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominantly used and acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards; and
  - (2) the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, recycling (as defined in section 45.8 of this chapter), or agriculture.

[45 IAC 2.2-5-70](#)(b) defines "consumed" and "incorporated" for purposes of this exemption:

- Definitions. (1) Consumed as used in this regulation [[45 IAC 2.2](#)] means the dissipation or expenditure by combustion, use or application, and does not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear or breakage of tools, machinery, devices or furnishings.
- (2) Incorporated as used in this regulation [[45 IAC 2.2](#)] means the material must be physically combined into and become a component of the environmental quality device, facility, or structure. The material must constitute a material or integral part of the finished product.

Taxpayer claims certain purchases are exempt because they were used for "pollution control." Taxpayer is "engaged in the business . . . agriculture," but it has not explained why use for "pollution control" entitles Taxpayer to an exemption from sales and use tax. Taxpayer has not pointed to a federal, state, or local environmental quality statute, regulation, or standard. Taxpayer has not established that the specific purchases for which this exemption is claimed meet the requirements of this exemption. Therefore, Taxpayer has not established that this exemption applies to the purchases for which it is claimed. Taxpayer has not met its burden to prove that the assessment of use tax is incorrect. IC § 6-8.1-5-1(c).

#### **E. Research and Development Exemption.**

Taxpayer claims the purchase of poultry identification tags qualify for the research and development exemption identified in IC § 6-2.5-5-40 because they are "used to identify the birds used in R & D feed and yield testing." IC § 6-2.5-5-40, as in effect for 2010, 2011, and 2012, states:

- (a) As used in this chapter, "research and development activities" does not include any of the following:
  - (1) Efficiency surveys.
  - (2) Management studies.
  - (3) Consumer surveys.
  - (4) Economic surveys.
  - (5) Advertising or promotions.
  - (6) Research in connection with literary, historical, or similar projects.
  - (7) Testing for purposes of quality control.
- (b) As used in this section, "research and development equipment" means tangible personal property that:
  - (1) consists of or is a combination of:
    - (A) laboratory equipment;
    - (B) computers;
    - (C) computer software;
    - (D) telecommunications equipment; or
    - (E) testing equipment;
  - (2) has not previously been used in Indiana for any purpose; and

(3) is acquired by the purchaser for the purpose of research and development activities devoted directly to experimental or laboratory research and development for:

- (A) new products;
- (B) new uses of existing products; or
- (C) improving or testing existing products.

(c) A retail transaction:

- (1) involving research and development equipment; and
- (2) occurring after June 30, 2007, is exempt from the state gross retail tax.

"Research and development equipment does not include hand powered tools or property with a useful life of less than one year." Sales Tax Information Bulletin 75 (October 2008), 20081029 Ind. Reg. 045080815NRA. Taxpayer has not established that poultry identification tags are research and development equipment. Additionally, it is unclear whether the poultry identification tags are used for testing for quality control, an activity which is not research and development activity pursuant to statute. Taxpayer's purchase of poultry identification tags are not entitled to the research and development exemption.

Taxpayer claimed that purchases other than those for poultry identification tags were entitled to the research and development exemption. Taxpayer has not established those other purchases meet the requirements of the research and development exemption. Therefore, Taxpayer has not met its burden to prove that the assessment of use tax is incorrect. IC § 6-8.1-5-1(c).

#### **F. Tax Paid at Point of Purchase.**

Taxpayer states that certain purchases are exempt from sales and use taxes because tax was paid at the point of purchase. These purchases are for a drive-in rack system, 2 stainless doors, 10" corefloor, and 8" and 12" corefloor. Retail transactions ordinarily subject to use tax will be exempt if sales tax was paid at the point of purchase. IC § 6-2.5-3-4; [45 IAC 2.2-3-4](#).

For the purchase of the drive-in rack system, Taxpayer provided invoices showing tax calculated as a separately stated amount. Taxpayer has also provided copies of check stubs to show payment was made in the total amount, including the sales tax. Taxpayer's protest is sustained on the purchase of the drive-in rack system, subject to a supplemental audit review of the documentation provided.

For the purchase of the 2 stainless doors, Taxpayer provided a copy of the "quote" from the vendor which included the Indiana sales tax as a separately stated amount. Taxpayer provided an invoice showing the same amount. Taxpayer's protest is sustained on the purchase of 2 stainless doors, subject to a supplemental audit review of the documentation provided.

In the case of the purchase of 10" corefloor, Taxpayer provided invoices showing the Indiana taxes as separately stated amounts. Taxpayer's protest is sustained on the purchase of 10" corefloor subject to supplemental audit review of the documentation provided.

In the case of the purchase of 8" and 12" corefloor, Taxpayer provided a contract that states "Taxes: Applicable: \_\_\_x\_\_\_ Included." The contract did not identify the Indiana sales tax as a separately stated amount. Additionally, the corresponding invoices did not identify the Indiana sales tax as a separately stated amount. This documentation is insufficient to show that Indiana sales tax was paid at the point of purchase. Taxpayer's protest is denied on the purchase of the 8" and 12" corefloor.

#### **G. Construction Material.**

Taxpayer states that certain purchases are exempt from sales and use taxes because of [45 IAC 2.2-4-22](#). [45 IAC 2.2-4-22](#) states:

- (a) A contractor may purchase construction material exempt from the state gross retail tax only if he issues either an exemption certificate or a direct pay certificate to the seller at the time of purchase.
- (b) A contractor, who purchases construction material exempt from the state gross retail tax or otherwise acquires construction material "tax-free", is accountable to the Department of Revenue for the state gross retail tax when he disposes of such property unless the ultimate recipient could have purchased it exempt (see 6-2.5-5 [[45 IAC 2.2-5](#)]).
- (c) A contractor has the burden of proof to establish exempt sale or use when construction material, which was acquired "tax-free", is not subject to either the state gross retail tax or use tax upon disposition.

(d) Disposition subject to the state gross retail tax. A contractor-retail merchant has the responsibility to collect the state gross retail tax and to remit such tax to the Department of Revenue whenever he disposes of any construction material in the following manner:

- (1) Time and material contract. He converts the construction material into realty on land he does not own and states separately the cost for the construction materials and the cost for the labor and other charges (only the gross proceeds from the sale of the construction material are subject to tax); or
- (2) Construction material sold over-the-counter. Over the counter sales of construction materials will be treated as exempt from the state gross retail tax only if the contractor receives a valid exemption certificate issued by the person for whom the construction is being performed or by the customer who purchases over-the-counter, or a direct pay permit issued by the customer who purchases over-the-counter.

(e) Disposition subject to the use tax. With respect to construction material a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner:

- (1) He converts the construction material into realty on land he owns and then sells the improved real estate;
- (2) He utilizes the construction material for his own benefit; or
- (3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

A disposition under C. [subsection (e)(3) of this section] will be exempt from the use tax if the contractor received a valid exemption certificate from the ultimate purchases (purchaser) or recipient of the construction material (as converted), provided such person could have initially purchased such property exempt from the state gross retail tax.

Taxpayer has not explained how this regulation applies to any purchase it claims is exempt. Therefore, Taxpayer has not met its burden to prove that the assessment of use tax is incorrect. IC § 6-8.1-5-1(c).

#### **H. Power Subsidiaries.**

Taxpayer claims that the provisions of IC § 6-2.5-4-5 apply to certain purchases. IC § 6-2.5-4-5, effective during 2010 and 2011, states:

(a) As used in this section, a "power subsidiary" means a corporation which is owned or controlled by one (1) or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.

(b) A power subsidiary or a person engaged as a public utility is a retail merchant making a retail transaction when the subsidiary or person furnishes or sells electrical energy, natural or artificial gas, water, steam, or steam heating service to a person for commercial or domestic consumption.

(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction in any of the following transactions:

- (1) The power subsidiary or person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the services or commodities listed in subsection (b).
- (2) The power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter.
- (3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.
- (4) The power subsidiary or person sells the services or commodities listed in subsection (b) and all the following conditions are satisfied:

(A) The services or commodities are sold to a business that after June 30, 2004:

- (i) relocates all or part of its operations to a facility; or
- (ii) expands all or part of its operations in a facility;

located in a military base (as defined in [IC 36-7-30-1\(c\)](#)), a military base reuse area established under [IC 36-7-30](#), the part of an economic development area established under [IC 36-7-14.5-12.5](#) that is or formerly was a military base (as defined in [IC 36-7-30-1\(c\)](#)), a military base recovery site designated under [IC 6-3.1-11.5](#), or a qualified military base enhancement area established under [IC 36-7-34](#).

(B) The business uses the services or commodities in the facility described in clause (A) not later than



five (5) years after the operations that are relocated to the facility or expanded in the facility commence.  
(C) The sales of the services or commodities are separately metered for use by the relocated or expanded operations.

(D) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under [IC 36-7-34-4\(1\)](#), the business must satisfy at least one (1) of the following criteria:

- (i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in [IC 36-7-34-3](#)).
- (ii) The business is a United States Department of Defense contractor.
- (iii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the United States Department of Defense.

(E) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under [IC 36-7-34-4\(2\)](#), the business must satisfy at least one (1) of the following criteria:

- (i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in [IC 36-7-34-3](#)).
- (ii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the qualified military base (as defined in [IC 36-7-34-3](#)).

However, this subdivision does not apply to a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

(5) The power subsidiary or person sells services or commodities that:

- (A) are referred to in subsection (b); and
- (B) qualify as home energy (as defined in [IC 6-2.5-5-16.5](#));

to a person who acquires the services or commodities after June 30, 2006, and before July 1, 2007, 2009, through home energy assistance (as defined in [IC 6-2.5-5-16.5](#)).

IC § 6-2.5-4-5, effective during 2012, states:

(a) As used in this section, a "power subsidiary" means a corporation which is owned or controlled by one (1) or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.

(b) A power subsidiary or a person engaged as a public utility is a retail merchant making a retail transaction when the subsidiary or person furnishes or sells electrical energy, natural or artificial gas, water, steam, or steam heating service to a person for commercial or domestic consumption.

(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction in any of the following transactions:

- (1) The power subsidiary or person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the services or commodities listed in subsection (b).
- (2) The power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter.
- (3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, processing (after December 31, 2012), repairing (after December 31, 2012), refining, recycling (as defined in [IC 6-2.5-5-45.8](#)), oil extraction, mineral extraction, irrigation, agriculture, floriculture (after December 31, 2012), arboriculture (after December 31, 2012), or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.
- (4) The power subsidiary or person sells the services or commodities listed in subsection (b) and all the following conditions are satisfied:

(A) The services or commodities are sold to a business that after June 30, 2004:

- (i) relocates all or part of its operations to a facility; or
- (ii) expands all or part of its operations in a facility;

located in a military base (as defined in [IC 36-7-30-1\(c\)](#)), a military base reuse area established under [IC 36-7-30](#), the part of an economic development area established under [IC 36-7-14.5-12.5](#) that is or

formerly was a military base (as defined in [IC 36-7-30-1\(c\)](#)), a military base recovery site designated under [IC 6-3.1-11.5](#), or a qualified military base enhancement area established under [IC 36-7-34](#).

(B) The business uses the services or commodities in the facility described in clause (A) not later than five (5) years after the operations that are relocated to the facility or expanded in the facility commence.

(C) The sales of the services or commodities are separately metered for use by the relocated or expanded operations.

(D) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under [IC 36-7-34-4\(1\)](#), the business must satisfy at least one (1) of the following criteria:

(i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in [IC 36-7-34-3](#)).

(ii) The business is a United States Department of Defense contractor.

(iii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the United States Department of Defense.

(E) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under [IC 36-7-34-4\(2\)](#), the business must satisfy at least one (1) of the following criteria:

(i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in [IC 36-7-34-3](#)).

(ii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the qualified military base (as defined in [IC 36-7-34-3](#)).

However, this subdivision does not apply to a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

Taxpayer has not explained how this statute applies to any purchase it claims is exempt. Taxpayer merely states the "machinery, equipment, and supplies are exempt from sales tax" pursuant to "[IC 6-2.5-4-5](#) Power Subsidiaries." This assertion alone does not establish that the purchases are entitled to an exemption. Therefore, Taxpayer has not met its burden to prove that the assessment of use tax is incorrect. IC § 6-8.1-5-1(c).

#### **I. Electric or Steam Utilities Production Plant or Power Production Expenses.**

Taxpayer claims that certain purchases are exempt from sales and use taxes because of IC § 6-2.5-5-10. IC § 6-2.5-5-10 states:

Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is classified as production plant or power production expenses, according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission; and

(2) the person acquiring the property is:

(A) a public utility that furnishes or sells electrical energy, steam, or steam heat in a retail transaction described in [IC 6-2.5-4-5](#); or

(B) a power subsidiary (as defined in [IC 6-2.5-4-5\(a\)](#)) that furnishes or sells electrical energy, steam, or steam heat to a public utility described in clause (A).

Taxpayer has established that it produces electricity. However, it has not established that the purchases for which this exemption is claimed meet the other requirements of this exemption. Taxpayer merely states the "machinery, equipment, and supplies are exempt from sales tax" pursuant to "[IC 6-2.5-5-10](#) Electric or Steam Utilities Production Plant or Power Production Expenses." This assertion alone does not establish that the purchases are entitled to the exemption. Therefore, Taxpayer has not met its burden to prove that the assessment of use tax is incorrect. IC § 6-8.1-5-1(c).

#### **J. Wastewater Utilities, Plants and Expenses.**

Taxpayer states that certain purchases are exempt from sales and use taxes because of IC § 6-2.5-5-12.5. IC § 6-2.5-5-12.5 states:

(a) As used in this section, "collection plant and expenses" includes the following:

- (1) Expenditures for collection plant, which include the following:
  - (A) Land and land rights.
  - (B) Structures and improvements.
  - (C) Power generation equipment.
  - (D) Collection sewers and special collecting structures.
  - (E) Receiving wells.
  - (F) Pumping equipment.
  - (G) Transportation equipment.
  - (H) Other collection plant expenditures.
- (2) Expenditures for collection expenses, which include the following:
  - (A) Operation supervision and engineering.
  - (B) Purchased power or fuel for power production.
  - (C) Chemicals.
  - (D) Materials and supplies.
  - (E) Maintenance supervision and engineering.
  - (F) Rental of real property or equipment.
  - (G) Maintenance of power generation equipment.
  - (H) Maintenance of structures and improvements.
  - (I) Maintenance of transportation equipment.
  - (J) Maintenance of collection plant equipment.
- (b) As used in this section, "public utility" means a public utility (as defined in [IC 8-1-2-1\(a\)](#)) or any person that contracts with a municipality to operate, manage, or control any plant or equipment owned by the municipality for the collection, treatment, or processing of wastewater.
- (c) As used in this section, "system pumping plant and expenses" includes the following:
  - (1) Expenditures for pumping plant, which include the following:
    - (A) Land and land rights.
    - (B) Structures and improvements.
    - (C) Boiler plant equipment.
    - (D) Other power production equipment.
    - (E) Steam pumping equipment.
    - (F) Electric pumping equipment.
    - (G) Diesel pumping equipment.
    - (H) Hydraulic pumping equipment.
    - (I) Other pumping equipment.
  - (2) Expenditures for pumping expenses, which include the following:
    - (A) Operation supervision and engineering.
    - (B) Fuel for power production.
    - (C) Power production labor and expenses.
    - (D) Fuel or power purchased for pumping.
    - (E) Pumping labor and expenses.
    - (F) Miscellaneous expenses.
    - (G) Rents.
    - (H) Maintenance supervision and engineering.
    - (I) Maintenance of power production equipment.
    - (J) Maintenance of pumping equipment.
- (d) As used in this section, "treatment and disposal plant and expenses" includes the following:
  - (1) Expenditures for treatment and disposal plant, which include the following:
    - (A) Land and land rights.
    - (B) Structures and improvements.
    - (C) Power generation equipment.
    - (D) Pumping equipment.
    - (E) Flow measuring devices and installations.
    - (F) Reuse meters and meter installations.
    - (G) Reuse transmission and distribution systems.
    - (H) Treatment and disposal equipment.
    - (I) Sewers and sewer lines.
    - (J) Transportation equipment.
  - (2) Expenditures for treatment and disposal expenses, which include the following:
    - (A) Operation supervision and engineering.
    - (B) Purchased wastewater treatment.
    - (C) Sludge removal expenses.

- (D) Purchased power or fuel for power production.
- (E) Chemicals.
- (F) Materials and supplies.
- (G) Maintenance supervision and engineering.
- (H) Rental of real property or equipment.
- (I) Maintenance of power generation equipment.
- (J) Maintenance of structures and improvements.
- (K) Maintenance of transportation equipment.
- (L) Maintenance of treatment and disposal plant equipment.
- (e) Transactions involving tangible personal property are exempt from the state gross retail tax if:
  - (1) the property is classified as collection plant and expenses, treatment and disposal plant and expenses, or system pumping plant and expenses; and
  - (2) the person acquiring the property is a public utility that collects, treats, or processes wastewater.

Taxpayer has not established that the purchases for which this exemption is claimed meet all the requirements of this exemption. Taxpayer merely states the "machinery, equipment, and supplies are exempt from sales tax" pursuant to "[IC 6-2.5-5-12.5](#) Wastewater Utilities, Plants and Expenses." This assertion alone does not establish that the purchases are entitled to the exemption. Therefore, Taxpayer has not met its burden to prove that the assessment of use tax is incorrect. IC § 6-8.1-5-1(c).

### FINDING

Taxpayer's protest is sustained for the purchase of a drive-in rack system, 2 stainless doors, and 10" corefloor subject to supplemental audit review of documentation provided. Taxpayer's protest is denied for all other purchases.

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